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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

BRADLEY ALAN DAYLEY,

Defendant and Appellant.

C069732

(Super. Ct. No.
09F07258)

Defendant Bradley Alan Dayley was convicted on numerous counts of sexually abusing a child and was sentenced to an aggregate term of 60 years to life, plus eight months. Defendant's sole contention on appeal is that the trial court "improperly imposed" Government Code section 29550.2 booking and classification fees. We disagree.¹

At sentencing, the trial court ordered defendant to pay (among other fines and fees) a main jail booking fee of \$270.17,

¹ Because the facts of defendant's crimes are not relevant to the issue on appeal, we do not include them in our opinion.

and a main jail classification fee of \$51.34. Defendant contends there is no evidence of the actual administrative costs of booking or classification, and there is insufficient evidence to support a finding that he had the ability to pay jail booking and classification fees. Accordingly, he contends, those fees should be stricken.

Under Government Code section 29550.2, subdivision (a), "[a]ny person booked into a county jail pursuant to any arrest . . . is subject to a criminal justice administration fee for administration costs incurred in conjunction with the arresting and booking if the person is convicted of any criminal offense relating to the arrest and booking. The fee which the county is entitled to recover pursuant to this subdivision shall not exceed the actual administrative costs, as defined in subdivision (c) If the person has the ability to pay, a judgment of conviction shall contain an order for payment of the amount of the criminal justice administration fee by the convicted person, and execution shall be issued on the order in the same manner as a judgment in a civil action"

Subdivision (c) of the same section authorizes fees for booking and classification while in jail.

Defendant claims that since the statute is predicated on a defendant's ability to pay and the actual accrual of administrative costs, and there was evidence of neither before the trial court, the fees were improperly imposed. The People respond that defendant forfeited this issue by not raising his objection in the trial court.

We agree with the People. This court has previously held that if a defendant does not object in the trial court to the imposition of a fee or fine, the issue is forfeited. (*People v. Crittle* (2007) 154 Cal.App.4th 368, 371 [crime prevention fine—Pen. Code, § 1202.5, subd. (a)]; *People v. Hodges* (1999) 70 Cal.App.4th 1348, 1357 [jail booking fee—Gov. Code, § 29550.2]; *People v. Gibson* (1994) 27 Cal.App.4th 1466, 1467, 1468-1469 (*Gibson*) [restitution fine—Gov. Code, former § 13967, subd. (a).) We have applied the forfeiture rule even when the defendant claims on appeal that there is not sufficient evidence to support the imposition of the fine or fee. (*Gibson*, at pp. 1467-1469.)

The Sixth Appellate District, however, has concluded that appeals challenging the imposition of fines and fees based on claims of insufficient evidence “do not require assertion in the court below to be preserved on appeal.” (*People v. Pacheco* (2010) 187 Cal.App.4th 1392, 1397, citing *People v. Viray* (2005) 134 Cal.App.4th 1186, 1217.) This holding created a conflict between *Pacheco* and this court’s cases cited above. The California Supreme Court has agreed to resolve the conflict. (See *People v. McCullough* (2011) 193 Cal.App.4th 864, review granted June 29, 2011, S192513.)

Until the California Supreme Court issues further guidance, we continue to adhere to our holding in *Gibson*, i.e., that a failure to object to a fee or fine in the trial court forfeits the issue, even where the statute contemplates a judicial finding of ability to pay and the defendant challenges the

sufficiency of the evidence to support such a finding. (*Gibson, supra*, 27 Cal.App.4th at pp. 1467, 1468-1469.) "As a matter of fairness to the trial court, a defendant should not be permitted to assert for the first time on appeal a procedural defect in imposition of a restitution fine, i.e., the trial court's alleged failure to consider defendant's ability to pay the fine. [Citation.] Rather, a defendant must make a timely objection in the trial court in order to give that court an opportunity to correct the error; failure to object should preclude reversal of the order on appeal." (*Id.* at p. 1468.) Not applying forfeiture principles in such cases not only encourages attorney gamesmanship, but depletes judicial resources and wastes taxpayer money. (See *id.* at pp. 1468-1469.)

Accordingly, we conclude that defendant's failure to raise his claim in the trial court precludes review for the first time on appeal.

The People note errors in the abstract of judgment, including: (1) misstatements of the victims' names, (2) omission of the trial court's order that defendant pay \$702 for the cost of the presentence investigation and report under Penal Code section 1203.1b; and (3) the correct restitution order for victim N.W. Defendant agrees these mistakes need to be corrected. We shall direct the trial court accordingly.

DISPOSITION

The trial court is hereby directed to correct the abstract of judgment as follows: (1) identify the victims as N.W., B.W., and V.D.; (2) include the court's order pursuant to Penal Code

section 1203.1b that defendant pay \$702 for the cost of the presentence investigation and report; and (3) correct the restitution order to N.W. to be \$6,166.08 *plus an amount to be determined*. The trial court is further directed to forward a certified copy of the corrected abstract of judgment to the California Department of Corrections and Rehabilitation.

The judgment is affirmed as corrected.

RAYE, P. J.

We concur:

MAURO, J.

HOCH, J.